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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 542

DUNCAN COFFEE COMPANY,

Petitioner,

v.

RECONSTRUCTION FINANCE CORPORATION,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

PETITIONER'S REPLY BRIEF

The opinion of the Emergency Court of Appeals (R. 16) is reported at 178 F. 2d 926.

Jurisdiction

Section 204 (d) (50 U. S. C. A. 924) Emergency Price Control Act of 1942 as amended, provides for petition for certiorari in the Supreme Court of the United States within thirty days after entry of judgment of the Emergency Court of Appeals. The judgment of the Emergency Court of Appeals was entered December 16, 1949 and petition herein was accordingly filed January 14, 1949 (Emergency Price Control Act 56 Stat. 664; 50 U. S. C. A. 901 et seq.).

Questions Presented in This Reply Brief

1

Whether the coffee roaster as such, under the import subsidy contract and the law from which the contract arises, is plainly obligated to repay to respondent on terminal inventory coffee acquired from importers as such, and from other roasters in the exercise of established roaster industry practices equally and alike with all roasters, some of such coffee having been so acquired from such traditional domestic sources prior to the import subsidy program, some during the import contract period prior to amendment, and the remainder subsequent to amendment of the import subsidy contract and prior to expiration thereof (R. Br. 2).

2

Whether it is discriminatory to compel payment of 3¢ per pound on identical inventory serving identical economic purposes obtained and held under identical inventory quantity, cost and selling price controls, on the coffee of one roaster as such, acquired, equally and alike in the exercise of identical established roaster practices, while many other competitive roasters having a substantial quantity of identical inventory suffered no such payment, merely because the management of such roaster is integrated with the management of the separate and different function of a coffee importer as such (R. Br. 15).

Statement

From the respondent's brief it appears that his defense is essentially predicated upon three somewhat overlapping contentions.

1

First, that the language of the import subsidy contract unequivocally compels payment by petitioner of 3¢ per pound to respondent upon petitioner's coffee acquired by petitioner in its exercise of the established roaster industry distribution practices, as a consequence of petitioners having also exercised within an integrated management the separate and different established traditional industry practices of an importer of green coffee.

2

Second, the respondent contends that the formal language of the contract by which petitioner is identified as "hereinafter known as the importer" (R. Br. 12), prejudices petitioner in its equal competitive traditional exercise of its established roaster industry practices essential to the established distribution of coffee, and which practices are traditional to all roasters as such regardless of whether any roaster did or did not operate under an integrated management with that of an importer as such.

3

Third and finally, respondent contends that under the facts, the law and the contract its enforcement of payment or repayment of 3¢ per pound upon petitioner's roaster coffee acquired by its continued exercise of the identical and traditional established roaster industry practices equally and alike with all roasters as such, both prior to and during the period of the import contract, is not discriminatory against the petitioner's roaster inventory or roaster industry practices. Respondent's contention is to say, the mere fact that the petitioner's management is integrated in the performance of its established roaster

industry practices with that of the performance of petitioner's established importer industry practices while many competitive roasters as such are not so integrated, is sufficient to assess $79,059.36 prejudice to the petitioner's roaster practices which it performed while it was also performing under this import subsidy contract the separate and different established practices of the coffee importer industry, notwithstanding the fact that its such roaster practices were traditionally equal, alike, identical and competitive with all roasters as such regardless of integration.

Argument

If it is chosen to disregard all of the respondent's admissions and all the uncontradicted proof, the law under which this import subsidy contract arises, its purposes and intent, the original contract language, its purposes and intent, the entire atmosphere in which this undertaking was premised including the known established traditions, understanding and conduct of the industry to which the performance and purposes of this contract expressly relates, and to confine the interpretation to the strictest possible construction of paragraph 14 of the amendment here in question, it then might appear at first consideration that such language could be construed as a veiled forfeiture, prejudice or peril attending petitioner's continued lawful exercise of the traditional roaster industry distribution practice equally and alike with all roasters as such, of acquiring green coffee from importers who had imported it into continental United States. Such construction would then bring about the result here contended for by respondent and substantially the same result as that produced in the meat subsidy administration by what is known as the "ownership and control" clause which was expressly provided for in the meat subsidy

regulations but not so expressly provided for in the green coffee subsidy program.

Any consideration of the language of the contract amendment in question to determine whether that language clearly prejudices the continued exercise of the roaster industry practices by one who with equal sanction of law and tradition also holds an importing contract, necessarily must consider its elements and attributes which distinguish and identify the roaster from the importer. It is obvious that functionally and factually it is clearly shown that there is a traditional distinction between the two, whether integrated or not.

The roaster as such has no functions of importing. He is the customer of the importer. As to the roaster's manner of acquiring green coffee, the language used in the amendment in question "which the importer owns in the continental United States or for which a bill of lading covering the shipment to the United States for the importer's account has been issued in a foreign port," (R. 51; Br. 15, 16) is wholly surplusage for the simple reason that the established traditional roaster practice does not and never has included any characteristic of importing. On the contrary, the roaster as such—all roasters equally and alike—traditionally acquire only from those who do engage in importation and who therefore, are known as "the importer".

Traditionally it is commonly known that there are those enterprises whose functions are confined singularly to importing or to roasting, and there are also traditionally those enterprises who perform to a greater or lesser extent in both the roaster status as such and the separate and different status of the importer as such under an integrated management. This green coffee import subsidy program if valid under any concept is necessarily a production sub-

sidy by virtue of the requirements of law essential to validity. It is predicated upon the conception that while green coffees are not produced within the United States, nevertheless, the act of producing the same within the requirements of validity is performed by, and only by, the importer whose conduct and functions result in green coffees being brought or imported into the United States. Therefore, the importer is said to be the producer of green coffee in the United States. Can the mere purchase by the roaster as such, regardless of integration, from stocks or inventories already present in the United States having been imported by the importer, then be said to be the equivalent of production? Obviously the roaster whose traditional industry practice and whose performance of his essential place in the distribution of green coffee is limited to his acquiring the same from domestic stocks after importation is accomplished, cannot be logically nor reasonably said to be thereby performing an importer function any more than he can be said to be the importer of coffees which he does not import and on which he could not claim or receive subsidy.

The law out of which this contract arises, the original contract as well as the amendment in question all arise in an atmosphere of the unusual economic circumstances then obtaining. But the traditional practices of the particular segment of the coffee industry to which the performance of the importer purposes of this contract relates, involved only the employment of the established practices of those having historically performed such practices and who thereby were identified as green coffee importers. Yet this was not an undertaking between personages traditionally common to green coffee imports any more than it was common for such importers to receive a so-called subsidy from the government. In fact, the industry had experienced no previous government subsidy incident to importations. In

this situation the government called upon the importers as such and did not call upon the roasters whether integrated or not to exercise any function or to effect any departure from the established roaster practices of acquiring green coffee from the importers. In fact, just the contrary was clearly intended by the purposes underlying the law itself which were to restore and stabilize normal distribution. One has but to read the original contract to appreciate the singular absence of any reference or implication of its being concerned with such roaster practices.

The identical law intended that the authorities exercised thereunder should contribute to rather than further confuse or confound established industry practices of distribution and costs. (50 U. S. C. A. 902(h)). The reasons for this intent harmonizes with economic reality. The roaster as such being essential to any stabilizing effort, for the reason that the importer as such sells his coffee to the roaster. Without the roaster's purchases from the importer there could be no normal distribution of the green coffee. Therefore, neither the law, the original language of the contract nor the language of the amendment in question provided or intended that this essential distribution practice of the roaster as such was to be jeopardized, work a forfeiture or carried on at the roaster's peril as a consequence of this importing program. To say that this established distribution practice of the roaster as such, whether integrated or not, was to become burdened for the first time in history, is to say that those roasters who as such exercised such practices to a lesser extent than do others must henceforth engage in such traditional roaster industry practices at their peril. It is to say that the distribution is to be further confused and confounded from the importer's perspective because he may lose a portion of his customers to whom he traditionally sold his imported coffees. It is to say from

the perspective of the roaster as such whose management is integrated, that he continues such established roaster industry practice of acquisition from importers as such subject to peril or repayment with which his competing roasters engaging in identical practices, but to a greater extent, shall remain wholly free of burden and shall continue to exercise such practices but with a 3¢ per pound advantage in value.

Respondent's contention would apply at once both the brakes and the accelerator. It would not contribute to the efficiency of the engine. The purposes of the import subsidy program and of the law could not be effectively furthered by introducing a new change in the established distribution practice of the roaster whether the management of such roaster practice was or was not integrated with that of the importer practice. The law does not speak against integration. The contract does not speak against integration. If the business practices are established and traditional to the industry in which integration of management is common and traditional the law does not except from its protection the enforcement of burden not previously characteristic to such established roaster practice, distribution and cost consequence.

It must be kept in mind that at all times pertinent WFO 146 (11 F.R. 3785) quantity inventory and equitable distribution controls, and the OPA purchase price and selling price controls applied equally and alike to all roasters as such and equally and alike to all importers as such. The same law and intent underlies the contract here involved. It is singular that the term, "the importer" as used in the contract is inseparable in concept from the express qualifications of the contractor which describe his functional identity as being the importer as such who is and has been regularly engaged in the importation of coffee and who

in such importing capacity had an import quota as such, established under WFO 63 of the Department of Agriculture (R. 41). Notwithstanding the frequent usage of the term "the importer" there was no indication or implication of intent to extend or broaden the purport or effect thereof beyond the engagement in importations of coffee, and over into the established practices of a roaster as such until the last amendment came to be interpreted by the respondent after performance of the importations by the importer. Only then did the respondent make known clearly its intent to belatedly affix the forfeiture or the peril consequent of the continued exercise of roaster practices contrary to and not previously characteristic of the industry.

50 U. S. C. A. App. 902 (h), Section 204 (b) Emergency Price Control Act, clearly shows that the conditions attending this green coffee import subsidy contract *shall not* be such as to inject a burden not characteristic of the industry, except where such action is found to be necessary. It has been shown that there could be no necessity for burdening the established practice of the roaster industry or that part of it which traditionally operates under integrated management. It has been shown that the roaster industry practices including that segment operating under integrated management, is essential to normal distribution of the green coffee after it has been acquired and imported into the United States by the importer thereof. It has been shown that such burden in common sense could only further confuse and confound and would not contribute to the restoration or stabilization of normal distribution or economy. We respectfully refer respondent to its admissions in regard to such practices having been traditional to petitioner and all roasters equally and alike and with regard to the essentiality of such practices in normal distribution of green coffee in the United States.

As an example of the inevitable effect which respondent's interpretation would have upon distribution, let us assume that petitioner as a roaster normally acquires 10,000 bags from importer B from time to time during the course of a specific period. Assume that roaster A being competitive with petitioner as a roaster, under the same period likewise acquires a similar quantity from the identical importer. Roaster A is not integrated with the management of any importer as such. Each roaster under WFO 146 is allowed an identical quantity of inventory. Out of this each must compete with the other. The OPA controls are such that each roaster is governed by the identical ceiling purchase price in his acquisitions from importer B and each roaster is likewise limited to the identical selling price which he may receive for coffees sold by him. Let us assume that each roaster at the terminal point of this program had 5,000 bags of coffee in his roaster inventory which he had acquired under the above conditions from domestic sources on which neither roaster could receive subsidy. Respondent enforces the repayment on such identical inventory of identical economic and competitive significance, by petitioner in the sum of $39,000. Roaster A has no burden whatsoever yet both roasters have engaged in the identical established industry conduct and the conduct of each is of identical economic purpose and significance. Since the law and the contract did not propose to change the nature of our competitive economy but rather sought to restore and stabilize the same, can it be assumed that it was the intent of the law or the contract to expect petitioner to proceed with its established roaster industry practices as before such burden and peril was ingrafted thereon? Is the law so blind to economic reality as to anticipate that such a competitive burden and radical departure from established business practices of the roaster as such would contribute to the

stabilizing or restoring of normal distribution? (*Genser* v. *R.F.C.*, 169 F. 2d 141, par. 5).

The result cited in the example is exactly what respondent's interpretation would cause. Yet, respondent admits that the petitioner had to first expend a sum equal to the subsidy on its imported coffee and has repaid all that was due on imported inventory. So there is no windfall or profiteering on imported inventory. OPA purchase and selling price controls applied to all activities equally. WFO 146 gave him no advantage in any respect as to quantity of inventory. All this, regardless of integration. Therefore, he ends up with an industry practice and distribution drastically changed and burdened far in excess of any price control. Respondent's interpretation should be said to constitute profit control to the extent of $79,059.36 *minus*.

Certainly the language of the concluding sentence of paragraph 14 cannot fairly be construed to plainly and exclusively extend the importer's burden over into the established traditional practices of the roaster as such whether integrated or not. The contract provides for the loss of import subsidy as a penalty for violation of certain of its terms and conditions. It is said that the concluding sentence of paragraph 14 would be meaningless if petitioner's traditional roaster practices were not burdened when integranted under the same management as the importer practice. Respondent forgets that an equally logical and controlling meaning and effect of such language could be that the importer as such could not be required to repay a greater sum than he had received as subsidy, if the importer's terminal inventory included coffee on which his claim for subsidy had been forfeited or denied by reason of some violation. Surely such language is less than plain and clear draftsmanship which might support a forfeiture.

Respondent in the footnote on page 11 of its brief attributes significance and states that petitioner is the only member of the industry which has challenged its interpretation and brought suit. The respondent well knows that it has threatened suit in many analogous and similar situations and has indicated of its own volition that it was deferring therein only to await the outcome of petitioner's suit.

In a further footnote on the same page of its brief respondent has difficulty in determining why petitioner refers to the "importer's inventory". The reference is not of obscure origin. The language of the amendment in question (R. 51) in effect refers to the importer's inventory and describes the inventory concerned to be that inventory which the importer owns in the continental United States or for which a bill of lading covering shipment to the United States for the importer's account has been issued in a foreign port. Therefore, since the importer as such could not have inventory in the continental United States without having imported it, and since the roaster as such traditionally engages in no importations and has no qualifications or quota identifying him as the importer intended by the contract, the inventory intended and described by the contract and the amendment could not be such inventory as was already in the United States when the roaster acquired it. The contract did not require as an eligibility qualification or as descriptive of the functions covered, that the importer is and had been regularly engaged in the established practices of a roaster in acquiring coffees from domestic stocks of those who had imported the same. From this it becomes compelling that the inventory upon which repayment was intended to be enforced was that of the importer who had imported it or who had a bill of lading issued in a foreign port and who had not at the terminal point sold it to the roasters at the OPA price prior to increase.

At page 12 respondent's brief endeavors to show that initial formal contract reference to the parties is such as to clearly extend the $79,059.36 burden to the exercise of the established traditional roaster practices when such practices are engaged in by a roaster as such whose management is integrated with that of an importer. Respondent argues that the term "the importer" is unequivocably sufficiently broad to include the fixing of this 3¢ per pound burden for the first time in history, as a consequence of the continued lawful exercise of the roaster industry practices during the period of this import contract, if the management of such roaster practices as such is integrated with the separate and different established practices of the importer as such. If such a change in the established industry practices and distributing can be construed in the vague premise of such language, then there is contrarily no need for the preciseness of the meaning ascribed the use of language in the course of interpreting regulations and orders arising from this identical law, such as that which is seen in WFO 146 (11 F.R. 3785) where the distinction between the importer and the roaster is clearly recognized and binding upon all segments of the industry equally and alike with respect to the quantity of inventory permitted each roaster as such and each importer as such and providing for equitable distribution among all. Such an interpretation would likewise be contrary to the recognition of the distinction afforded by similar language between the importing status as such and other integrated functional activities as declared upon and upheld by the lower court in the *Booth Fisheries* case (153 F. 2d 449) where it was held that a price regulation arising under this identical law could not be construed to apply to the complainant consequent of the complainant's integrated activity in a segment of the industry which did come within the higher price regulation which the Administrator sought

to enforce, and in the *Electromatic Distributors* case (162 F. 2d 212) in which the same court held that in fact and reality one was not a manufacturer who had not manufactured the commodity in question but who had in fact imported such commodity, notwithstanding the fact that traditionally he was a manufacturer and integrated. If such interpretation should prevail as the respondent contends for by virtue of this veiled language, the uncontradicted proof shows without question that it will be contrary to the traditional coffee industry usage and will produce synonymity in the industry practices and significance of the terms "the importer" and "the roaster" for the first time in the history of the coffee industry (P. Br. app. 37-58 inc.; R. 134-137 inc.; R. 4-17 inc.).

Petitioner does not seek to have this contract rewritten. It seeks to have it interpreted in the light of those essential elements and premises making up the extraordinary circumstances out of which the law and this contract arose, all of which would be disregarded and excluded by respondent who would also totally disregard its own admissions with respect thereto as well as the uncontradicted evidence.

Respondent in a footnote at page 13 of his brief attaches significance to a presumption that the subsidy had been paid, which was contained in an amendment to Directive 87 and which was not incorporated in the amendment to the contract in question in this case. The fact that such presumption was deliberately left out of the contract amendment in question is entirely harmonious with the necessity that this import subsidy be a production subsidy as such, and therefore, only producers (importers as such) were eligible thereto. It further clearly shows that the particular inventory upon which the repayment was to be enforced was indeed that inventory which had been produced (imported) by the importer, who was required by the contract

to be regularly engaged in the importation of green coffee and have a quota of permitted importations assigned to him by the Department of Agriculture under WFO 63, and that in the exercise of such importing qualifications the importer had to accomplish actual importations instead of presuming importations. The requirement of law that this be in fact a production subsidy could not be met by the device of presumption. Lastly, the fact that presumption was not indulged in in the contract amendment in controversy would be more significant than the mere fact that at one time prior to the amendment of the contract the presumption did exist. (*Genser* v. *R.F.C.*, 169 F. 2d 141, par. 5).

Respondent in the footnote at page 13 of its brief indicates necessity for pursuing the coffee from the importer into the hands of the roaster (only if the roaster as such is integrated with the management of the separate and different importer status) upon the possibility of manipulation to circumvent. This is rather a naive argument. It is apparent and notorious that the government was not without means of preventing and punishing evasion and that it required the solemn oath under severe penalty almost universally in any such relationship. This argument is to say that all roasters upon whom the stigma of integration can be affixed are assumed to be guilty of unlawful intent, and that many shall be punished for the one who may in the future be guilty. This argument also overlooks the critical fact that the subsidy herein sought has been earned by accomplishment of importations, and which reasonably and necessarily required the importer as such to first expend an equivalent amount. It is mere reimbursement at most.

The mere presumption or statement of necessity by respondent at this late date does not show necessity for following the inventory from the importer into the roaster for

recapture only when the roaster is integrated. It must be remembered that the petitioner makes no complaint of its treatment as an importer and seeks no recovery of any part of its payment made upon imported inventory. But the control of profits of the roaster as such in the exercise of its traditional industry practices or the jeopardizing of its values consequent of the lawful exercise of such roaster industry practices is indeed farfetched, especially when realities of competitive economy are so plainly protected by the law. Profit control is not provided for as a purpose of this contract and was not mutually agreed upon and is obviously discriminatory against the few roasters who are integrated and in favor of the many who had substantial inventory on hand at the same time and who are economically identical and competitive as roasters with petitioner as a roaster.

Normal distribution and stability under any program would suggest and necessitate continuous activity in the established practices of both the importer as such and the roaster as such, reinvesting in competitive economy. It is commonly known that the cost of green coffee was increased and that OPA ceiling price controls applied upon each character of enterprise equally and alike regardless of integration until long after this contract and program had expired. Respondent's effort now to exercise profit and value control over these roasters as such, not as importers but as roasters, and to do so by discriminatorily enforcing burden to the hitherto equally competitive factors of the roaster function as such and traditionally equal industry practices thereof, with no finding of necessity and in the face of respondent's admission that the roasters continued exercise of such practices was essential to the normal distribution, is hard for the petitioner to grasp.

It is difficult to reconcile respondent's argument with economic reality which the law in its expressions, purpose

and intent took into account and which the lower court took into account and upheld in the Booth and Electromatic cases, supra, while at the same time recognize the obvious fact that the law and premise out of which regulations arose which have received interpretation supporting petitioner's contention as to the significance of the language of this contract and of its amendment in question, is the identical law, purpose, intent and unusual premise out of which this contract and its amendment arose. The law made no distinction between the purposes and intent of regulations as such and this contract. It made no distinction in the interpretation of such regulations and such contracts as arise from the identical source of law and intent and purposes thereof. To say that such a visitation of burden and discrimination was plainly discernible to the integrated roaster as such by the language of the law or this contract and amendment, and therefore such roaster by signing such a contract slipped his head in the noose of intentional mutual agreement, is almost so unreal as to attribute supernatural power of discernment to a coffee roaster. Petitioner confesses the same need for clarity and plain language as has so frequently been required of respondent by the courts.

The respondent finally contends at page 15 of its brief, that there is no economic community and no discrimination in its interpretation. Lastly, respondent indicates that the burden complained of may have come about through accident or as a war casualty not contemplated by the law under which this contract arises.

Such a conclusion is a singular misunderstanding of reality. Respondent apparently forgets WFO 146 quantity and equitable distribution control order, previously discussed, which made it utterly impossible for petitioner or any other roaster regardless of integration to have more coffee than such order permitted, the effect of which renders

economic identity to the inventories of all roasters as such. It forgets that OPA price controls renders further economic identity, conduct and practices of all roasters and to the price at which all roasters could sell, as well as identity to the price which all roasters equally and alike regardless of integration had to pay for such identical coffees. It likewise forgets that similar controls and limitations of the same nature were placed upon all importers as such without regard to integration. Respondent further forgets the critical and admitted fact that petitioner's roaster status coffee (being the only subject of this controversy) was of necessity purchased from the "middleman" who imported it, and that such purchase was upon the identical competitive basis and under identical economic controls as all roasters and therefore, the roaster industry practices and consequence thereof by the petitioner were subject to identical "middleman" profits as were the identical purchases of the admittedly substantial quantity of identical and competitive coffees by all the other thousand roasters in the country.

It is stimulating to note respondent's conclusion that the subsidy upon importations by the importer as such offsets the prejudice of discrimination against petitioners having engaged in its traditional roaster practices equally and alike until respondent came to the belated interpretation here complained of. Has respondent forgot its admission that the importer as such found it both necessary and reasonable to first expend its own funds equal to the amount of the subsidy received and sought, in accomplishing its importation?

In view of respondent's admissions and of the inevitable economic realities there could be nothing left of the so-called import subsidy with which petitioner could hope to "counterbalance" the obvious discrimination against

this roasters having continued the established industry practices, and, on which coffees incident thereto he could receive no subsidy because he was not the producer (importer), but which on the contrary be bought from other roasters and from identical domestic suppliers under identical competitive price and quantity controls and for identical economic purposes, the identical coffees as were held in substantial quantities by many other roasters as such.

Finally, in respect of respondent's novel conclusions as to economics, middleman profits and counterbalancing, it seems clear that not only is respondent blind to economic reality and identity and the inevitable admission of the roasters continued competitive activity and essential place in the traditional established distribution practice in so far as the same relates to any stabilizing effort, but it forgets also that the premise underlying this entire program and so clearly envisaged in the purposes of the law out of which this contract as well as regulations are authorized, favors and encourages a competitive economy which was indeed, the goal of all restoration and stabilizing effort. There is nothing in the concept of this green coffee import subsidy program authorizing respondent to forsake, by arbitrary and discordant interpretation, the fundamental principle that one roaster as such whose economic purpose, conduct and consequence is identical with that of all roasters as such without regard to integration, is entitled to rely upon interpretation in keeping with the known traditional practice of the industry and one which does not unnecessarily and without plain notice unequally discriminate to the extent of $79,059.36 against his lawful and traditional engagement in such industry practices. Indeed, respondent's interpretation is the hand of Esau but its voice is the voice of Jacob; it would now change its voice to overlook the economic facts and its

admissions and would disregard utterly the significance of the uncontradicted evidence; it would have its hands now change the fact of its inescapable discrimination and the consequences of petitioner's lawful continued traditional roaster industry practices as such equally and alike with all roasters. Respondent would cause further interference, confusion and confounding with the effort to protect and stabilize established distribution and cost practices of the industry by ingrafting a stigma to integration which stigma is in nowise provided for nor intended by law or the terms of this contract any more than a similar stigma was provided for or intended by the identical law in the case of regulations in the interpretation of which the identical stigma was rejected.

If there was law and reason in the premise underlying the equal and alike treatment accorded importers as such within this program, petitioner respectfully submits, the same law and reason must necessarily prevail against the demonstrative, unnecessary discrimination against any roaster who follows the established industry practices and distribution and who as a roaster is economically identical with all other roasters.

It is not disputed that respondent at all times was fully aware of the traditional existence of integrated management within the industry. And its failure to speak with the same clarity in the case of contract as it did in the case of regulations (ownership and control clause of meat subsidy) is now good reasoning, good law, and good conscience against its belated effort to impose burden not characteristic of the industry and to do so in a manner not consonant with the plain purposes and intent upon which its authorities are laid.

Its arbitrary discriminatory and capricious interpretation; its superimposition of this $79,059.36 prejudice are

no more well-founded against one roaster who is traditionally integrated but nonetheless a bona fide traditional roaster equal, competitively and alike with all roasters, than are respondent's enlightening attempts to show lack of economic identity, middleman profits and counterbalancing the funds which petitioner here seeks to recover and of which respondent would by such argument deprive the petitioner. Respondent's apparent conception of unconscionable windfall is as refreshing as it is removed from logical reasoning. Apparently in such reasoning respondent may have concluded that the petitioner has liquidated and gone out of business or may have such intent.

Conclusion

For the foregoing reasons and those submitted in its original brief petitioner respectfully submits, that it and the welfare of the industry in whose traditional practices it characteristically engages, have presented questions which warrant review, and that the petition for a writ of certiorari should be granted accordingly as prayed.

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